IN THE COURT OF APPEALS OF THE STATE OF MISSISSIPPI

VERENZO CARTRELL GREEN **APPELLANT**

V. **NO. 2013-KA-01228-COA**

STATE OF MISSISSIPPI **APPELLEE**

PETITION FOR WRIT OF CERTIORARI

Erin E. Pridgen, MS Bar No. 102352
INDIGENT APPEALS DIVISION
OFFICE OF STATE PUBLIC DEFENDER
Post Office Box 3510
Jackson, Mississippi 39207-3510
Telephone: 601-576-4290
Fax: 601-576-4205
E-mail: eprid@ospd.ms.gov

Counsel for Verenzo Cartrell Green

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COMES NOW, Verenzo C. Green, by and through counsel, pursuant to MRAP Rule 17(A), and files this Petition for Writ of Certiorari and respectfully requests that this Court grant certiorari review of the Mississippi Court of Appeals' decision handed down in this matter on January 20, 2015. In support thereof, Green would most respectfully show unto the court the following, to-wit;

1. Green was convicted of three (3) counts of possession of a weapon by a convicted felon and one (1) count of trafficking stolen firearms. The trial court sentenced Green as a habitual offender for each count of possession of a weapon by a convicted felon. These sentences were ordered to run consecutively. The court sentenced Green to fifteen (15) years for the trafficking stolen firearms conviction. This sentence was ordered to run concurrent to the possession counts. The court ordered that Green would not be eligible for parole or probation.

2. Green timely perfected the appeal of these convictions and sentences and, subsequently, the case was assigned to the Mississippi Court of Appeals. On January 20, 0215, the Court of Appeals issued its opinion in the matter and affirmed the judgment of the trial court.

3. On February 3, 2015, Green filed a Motion for Rehearing with the Court of Appeals and the same was denied by the court's order, entered on May 19, 2015.

4. Review is appropriate in this case because the opinion of the Court of Appeals involves a fundamental issue of broad public important requiring determination by the Supreme Court. MRAP

17 (a)(3)(ii). In its opinion, the Court of Appeals held that it was precluded from addressing the constitutionality of whether Mississippi Code Annotation Section 97-37-5(1) allowed for multiple convictions when weapons are possessed simultaneously by the defendant. (Op. ¶14). The interpretation of this section and its implications is an issue of first impression in Mississippi. (Op. ¶14).

5. Neither parties specifically raised this double jeopardy argument on appeal. However, as pointed out by the dissenting opinion, double jeopardy is a fundamental right that cannot be waived. The dissenting opinion stated that it would have held it was plain error and a violation of Green's fundamental right against double jeopardy to be convicted and sentenced for three separate counts for the simultaneous violation of Section 97-37-5(1). The majority opinion, however, incorrectly held that it would be inappropriate to address this double jeopardy issue as plain error in this case.

6. The majority's opinion ignores the doctrine of plain error and the fundamental nature the protections against double jeopardy. The Court of Appeals' opinion disregards the Supreme Court's solid stance in *Graves v. State,* 969 So. 2d 845, 846-47 (¶6), in which the Court held that "...protection against double jeopardy is a fundamental right, [and] we will not apply a procedural bar..." Also, in *Roland v. State,* 42 So. 3d 503, 508 (¶14) (Miss. 2010), the Court determined that double jeopardy is a fundamental right that simply cannot be waived.

7. Section 97-37-5(1), as it is written, creates an ambiguity as to whether the law punishes a convicted felon for possessing each separate firearm or for firearms as a whole. "It is bedrock law in Mississippi that criminal statutes are to be strictly construed against the State and liberally in favor of the accused." *Coleman v. State*, 947 So. 2d 878, 881 (Miss. 2006).

8. In this case, the trial court did not give the defense the protections of a liberal interpretation of this statue. The Court of Appeal affirmed this error. Therefore, Green requests this Court to review the Court of Appeals decision in this case issue an opinion, reversing Green's conviction and

sentence and remand this case to the circuit court with the instructions to vacate tow of the three convictions for possession of a weapobn by a convicted felon and the corresponding sentences.

WHEREFORE, PREMISES CONSIDERED, Verenzo C. Green respectfully requests that this Supreme Court issue a Writ of Certiorari, review the decision of the Mississippi Court of Appeals and reverse the same. Green requests that this Court instructed the circuit court to vacate two of the three convictions for possession of a weapon by a convicted felon and the corresponding sentences.

Respectfully submitted,

FOR **VERENZO CARTRELL GREEN**, APPELLANT

/s/Erin E. Pridgen
Erin E. Pridgen, Appellant Counsel

CERTIFICATE OF SERVICE

I, Erin E. Pridgen, Counsel for Verenzo Cartrell Green, do hereby certify that on this day I electronically filed the forgoing **PETITION FOR WRIT OF CERTIORARI** with the Clerk of the Court using the MEC system which sent notification of such filing to the following:

Honorable John R. Henry, Jr.
Attorney General Office
Post Office Box 220
Jackson, MS 39205-0220

Further, I have this day caused to be mailed via United States Postal Service, First Class postage prepaid, a true and correct copy of the above to the following non- MEC participants:

Verenzo Cartrell Green
MDOC #L0799
South Mississippi Correctional Institution
Post Office Box 1419
Leakesville MS 39451

This, the 4th day of June, 2015.

/s/Erin E. Pridgen_____
Erin E. Pridgen, Appellant Counsel

Erin E. Pridgen, MS Bar No. 102352
INDIGENT APPEALS DIVISION
OFFICE OF STATE PUBLIC DEFENDER
Post Office Box 3510
Jackson, Mississippi 39207-3510
Telephone: 601-576-4290
Fax: 601-576-4205
E-mail: eprid@ospd.ms.gov

APPENDIX A

COPY OF THE OPINION AND JUDGMENT OF THE MISSISSIPPI COURT OF APPEALS

JANUARY 20, 2015

Supreme Court of Mississippi
Court of Appeals of the State of Mississippi
Office of the Clerk

Muriel B. Ellis
Post Office Box 249
Jackson, Mississippi 39205-0249
Telephone: (601) 359-3694
Facsimile: (601) 359-2407

(Street Address)
450 High Street
Jackson, Mississippi 39201-1082

e-mail:sctclerk@courts.ms.gov

January 20, 2015

This is to advise you that the Mississippi Court of Appeals rendered the following decision on the 20th day of January, 2015.

Court of Appeals Case # 2013-KA-01228-COA
Trial Court Case # 12-KR-0138-J

Verenzo Cartrell Green a/k/a Verenzo Green v. State of Mississippi

The judgment of the Adams County Circuit Court of conviction of Counts I, II, and III, possession of a weapon by a convicted felon, and sentence as a habitual offender of ten years for each count, to run consecutively; and Count IV, trafficking stolen firearms, and sentenced of fifteen years to run concurrently to the sentences in Counts I, II, and III, all in the custody of the Mississippi Department of Corrections, without eligibility for parole or probation, is affirmed. All costs of this appeal are assessed to Adams County.

* NOTICE TO CHANCERY/CIRCUIT/COUNTY COURT CLERKS *
If an original of any exhibit other than photos was sent to the Supreme Court Clerk and should now be returned to you, please advise this office in writing immediately.

Please note: Pursuant to MRAP 45(c), amended effective July, 1, 2010, copies of opinions will not be mailed. Any opinion rendered may be found at www.mssc.state.ms.us under the Quick Links/Supreme Court/Decision for the date of the decision or the Quick Links/Court of Appeals/Decision for the date of the decision.

IN THE COURT OF APPEALS OF THE STATE OF MISSISSIPPI

NO. 2013-KA-01228-COA

VERENZO CARTRELL GREEN A/K/A VERENZO GREEN — **APPELLANT**

v.

STATE OF MISSISSIPPI — **APPELLEE**

DATE OF JUDGMENT:	03/07/2013
TRIAL JUDGE:	HON. FORREST A. JOHNSON JR.
COURT FROM WHICH APPEALED:	ADAMS COUNTY CIRCUIT COURT
ATTORNEY FOR APPELLANT:	OFFICE OF STATE PUBLIC DEFENDER BY: ERIN ELIZABETH PRIDGEN
ATTORNEY FOR APPELLEE:	OFFICE OF THE ATTORNEY GENERAL BY: BARBARA WAKELAND BYRD
DISTRICT ATTORNEY:	RONNIE LEE HARPER
NATURE OF THE CASE:	CRIMINAL - FELONY
TRIAL COURT DISPOSITION:	CONVICTED OF COUNTS I, II, AND III, POSSESSION OF A WEAPON BY A CONVICTED FELON, AND SENTENCED AS A HABITUAL OFFENDER TO TEN YEARS FOR EACH COUNT, TO RUN CONSECUTIVELY; AND COUNT IV, TRAFFICKING STOLEN FIREARMS, AND SENTENCED TO FIFTEEN YEARS, TO RUN CONCURRENTLY TO THE SENTENCES IN COUNTS I, II, AND III, ALL IN THE CUSTODY OF THE MISSISSIPPI DEPARTMENT OF CORRECTIONS, WITHOUT ELIGIBILITY FOR PAROLE OR PROBATION
DISPOSITION:	AFFIRMED: 01/20/2015
MOTION FOR REHEARING FILED:	
MANDATE ISSUED:	

BEFORE IRVING, P.J., FAIR AND JAMES, JJ.

FAIR, J., FOR THE COURT:

¶1. Verenzo Green was convicted of three counts of possession of a weapon by a convicted felon and one count of trafficking stolen firearms. He was sentenced as a habitual offender to ten years for each count of felon of possession of a firearm in the custody of the Mississippi Department of Corrections, to run consecutively; he also received a concurrent sentence of fifteen years for trafficking stolen firearms. On the day of trial, Green filed a motion to suppress, arguing the police discovered the firearms through an illegal search of his vehicle. The trial court denied the motion. Green claims on appeal that (1) the trial court erred in denying his motion to suppress, and (2) his conviction for trafficking stolen firearms was not supported by sufficient evidence. Finding no error, we affirm.

FACTS

¶2. On February 28, 2012, Agents George Pirkey and David Washington of the Adams County Sheriff's Department spotted Green outside of a grocery store. There was an outstanding warrant for Green's arrest for a burglary committed a month before. When the agents first saw him, Green and several other men were standing by a vehicle with its trunk open. As soon as Green noticed the agents, he closed the trunk and walked towards the entrance to the store. But instead of walking into the store, he threw a set of car keys down and ran into some nearby woods. Agent Pirkey attempted to chase Green on foot, while Agent Washington took the police car, but they were unable to catch him. The agents returned to the store a few minutes after the chase began and spoke with the store manager. After Agent Pirkey explained the situation to the manager, she requested that the car be towed. The police called a tow truck and ran the plate of the vehicle, which identified Green

as the owner. Additionally, the police conducted an inventory search of the vehicle. During the inventory search, Agent Pirkey used the car keys left by Green to open the trunk of the vehicle. Agent Pirkey discovered three guns on top of two large speakers; the guns included a Colt .38 special revolver, a .22 caliber Ruger revolver, and a .22 caliber Heritage Rough Rider. Green was indicted on three counts of possession of a weapon and one count of trafficking a firearm. He was found guilty at trial. Additional facts pertaining to the trial will be discussed below, as necessary.

DISCUSSION

1. Suppression of Evidence

¶3. The court denied Green's motion to suppress introduction and testimony about the handguns found in the trunk, finding that (1) Green abandoned his vehicle on private property, and (2) the police were reasonable in conducting an inventory search before impounding the vehicle. "When reviewing a trial court's ruling on a motion to suppress, we must assess whether substantial credible evidence supports the trial court's finding considering the totality of the circumstances." *Shaw v. State*, 938 So. 2d 853, 859 (¶15) (Miss. Ct. App. 2005) (citing *Price v. State*, 752 So. 2d 1070, 1073 (¶9) (Miss. Ct. App. 1999)). "The standard of review for the admission or suppression of evidence is abuse of discretion." *Hughes v. State,* 90 So. 3d 613, 631 (¶53) (Miss. 2012).

¶4. The Fourth Amendment protects "the right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures." U.S. Const. amend. IV. But a person has no standing to complain of a search or seizure of property that he has

abandoned. *United States v. Quiroz-Hernandez,* 48 F.3d 858, 864 (5th Cir. 1995) (citation omitted). The abandonment question is one of intent, primarily "whether the person prejudiced by the search had voluntarily discarded, left behind, or otherwise relinquished his interest in the property so that he could no longer retain a reasonable expectation of privacy with regard to it at the time of the search." *United States v. Williams,* 569 F.2d 823, 826 (5th Cir. 1978) (citation omitted). Further, "intent may be inferred from words spoken, acts done, and other objective facts . . . . All relevant circumstances existing at the time of the alleged abandonment should be considered." *United States v. Colbert,* 474 F.2d 174, 176 (5th Cir. 1973) (en banc).

¶5. In *United States v. Edwards* 441 F.2d 749, 751 (5th Cir. 1971), the Fifth Circuit held that a defendant abandoned his vehicle, and therefore had no Fourth Amendment protection in regard to the vehicle, when he left his keys in the ignition and fled on foot from the police. The defendant, Edwards, jumped out of his car during a high-speed chase. *Id.* at 750. The police chased Edwards but were unsuccessful in catching him. *Id.* Afterwards, the police searched the trunk of his car and discovered untaxed whiskey. *Id.* The Fifth Circuit ruled Edwards's actions constituted abandonment. *Id.*; *cf. States v. Smith*, 648 F.3d 654, 659 (8th Cir. 2011) (finding that the defendant abandoned the Cadillac in the Taco Bell drive-through lane when he fled on foot from the police); *State v. Branam*, 334 Mont. 457, 463 (Mont. 2006) (finding that the defendant's fleeing from the police and leaving an Escalade and its contents on the street constituted abandonment sufficient to justify having the car towed for impoundment).

¶6. Similarly, in *United States v. Wolfe,* No. 91-8603, 983 F.2d 232 (5th Cir. 1993) (unpublished), the Fifth Circuit held the defendant abandoned his rental car. We acknowledge that *Wolfe* was not selected for publication; the court determined that the case had no precedential value. *Id.* at *4. But we will address the facts in *Wolfe* because they are synonymous with the facts in this case. In *Wolfe*, the officers saw five men gathered around an open trunk in a parking lot known for drug trafficking. *Id.* at *1. The police asked the men who owned the vehicle, to which the men replied they did not know. *Id.* After noticing a rental-car sticker on the car, one of the officers called the rental company and discovered the identity of the renters, who were two of the five men questioned by the police. *Id.* The police then searched the vehicle and recovered a .357 magnum pistol, which had been stolen in a burglary two weeks before. *Id.* Wolfe was later indicted and found guilty at trial. *Id.* at *2. On appeal, Wolfe challenged the police's search of the rental car. *Id.* The court stated that "where a driver walks away from a rental car, disclaims any knowledge of it to the police, and leaves the keys on the dashboard with the windows rolled down, . . . he has abandoned that car for Fourth Amendment purposes." *Id.* at *4. The court found that Wolfe lacked standing because he abandoned the car; the court further noted that when Wolfe abandoned the car, he abandoned the contents of the car as well. *Id.*

¶7. We find the facts of this case akin to the circumstances in *Edwards* and *Wolfe.* Here, the imperative issue is whether Green's actions and the surrounding facts indicate that he abandoned the car. The police had a warrant for Green's arrest for another crime. When Green saw the police officers, he eased away from the vehicle, threw the keys to the ground,

and ran towards some nearby woods. Based on Green's actions and the relevant circumstances, we agree with the trial judge's determination that Green abandoned the vehicle. As a result, Green had no Fourth Amendment protection in regard to the vehicle.

¶8. Even if Green had not abandoned the car and thus had standing to challenge the search, the search was reasonable as an inventory search. We acknowledge that "[w]arrantless searches and seizures are 'per se unreasonable unless they fall within a few narrowly defined exceptions.'" *United States v. Kelly,* 302 F.3d 291, 293 (5th Cir. 2002). One such exception is when law enforcement performs an inventory search as part of a bona fide "routine administrative caretaking function." *United States v. Skillern,* 947 F.2d 1268, 1275 (5th Cir. 1991); *see also South Dakota v. Opperman,* 428 U.S. 364, 368 (1976).

¶9. An inventory search must not be a "ruse for general rummaging" to find incriminating evidence. *Florida v. Wells,* 495 U.S. 1, 4 (1990); *O'Connell v. State*, 933 So. 2d 306, 309 (¶9) (Miss. Ct. App. 2005). "In order to prevent inventory searches from concealing such unguided rummaging, [the] Supreme Court has dictated that a single familiar standard is essential to guide police officers, who have only limited time and expertise to reflect on and balance the social and individual interests involved in the specific circumstances they confront." *United States v. McKinnon*, 681 F.3d 203, 209 (5th Cir. 2012) (quotation omitted). "Thus, an inventory search of a seized vehicle is reasonable and not violative of the Fourth Amendment if it is conducted pursuant to standardized regulations and procedures that are consistent with (1) protecting the property of the vehicle's owner, (2) protecting the police against claims or disputes over lost or stolen property, and (3) protecting the police

from danger." *United States v. Lage,* 183 F.3d 374, 380 (5th Cir. 1999) (citing *United States v. Hope,* 102 F.3d 114, 116 (5th Cir.1996)); *see also Bolden v. State*, 767 So. 2d 315, 317 (¶9) (Miss. Ct. App. 2000). And the specified standardized regulations and procedures must "sufficiently limit the discretion of law enforcement officers to prevent inventory searches from becoming evidentiary searches." *United States v. Andrews*, 22 F.3d 1328, 1336 (5th Cir. 1994) (citation omitted).

¶10. "There is no requirement that the prosecution submit evidence of written procedures for inventory searches; testimony regarding reliance on standardized procedures is sufficient, as is an officer's unrebutted testimony that he acted in accordance with standard inventory procedures." *Lage*, 183 F.3d at 380. The officers' exercise of discretion does not violate the Fourth Amendment "so long as that discretion is exercised according to standard criteria and on the basis of something other than suspicion of evidence of criminal activity." *Colorado v. Bertine*, 479 U.S. 367, 375 (1987). "If there is no showing of bad faith or for the sole purpose of investigation, evidence discovered during an inventory search is admissible." *United States v. Gallo*, 927 F.2d 815, 819 (5th Cir. 1991).

¶11. After careful review, we find that the inventory search of Green's vehicle did not violate his Fourth Amendment rights. Agent Pirkey and Agent Washington performed the inventory search of Green's vehicle while waiting for the tow truck to arrive. Agent Pirkey testified that it is the Adams County Sheriff's Department's standard procedure to inventory the contents of a vehicle that is about to be impounded; he further stated that this policy is used to record any damage to the vehicle and release officers from any liability on

subsequent claims of damage or theft. *See Lattimore v. State*, 37 So. 3d 678, 684 (Miss. Ct. App. 2010) (finding it permissible for officers to conduct an inventory search of a vehicle when the circumstances require it to be impounded). Further, the record lacks any evidence of bad faith on the part of the officers in conducting the search. Accordingly, this issue has no merit.

2. Sufficiency of Evidence

¶12. A challenge of sufficiency of the evidence can be raised in a motion for a directed verdict, made at the end of the prosecution's case or at the close of all evidence, in a request for a peremptory instruction, or in a motion for a judgment notwithstanding the verdict. *Higgins v. State,* 725 So. 2d 220, 224 (¶22) (Miss. 1998). Here, Green made an unsuccessful motion for a directed verdict at the close of the prosecution's case. And he failed to renew the motion at the conclusion of all the evidence. "If a defendant puts on evidence in his own defense after the denial of his motion for a directed verdict, he waives his challenge to the sufficiency of the State's evidence up to that point." *Robinson v. State*, 749 So. 2d 1054, 1058-59 (¶13) (Miss. 1999). Further, Green's post-trial motion did not challenge the sufficiency of the evidence. "It is well established that 'questions will not be decided upon appeal which were not presented to the trial court and that court given an opportunity to rule on them.'" *Neese v. State,* 993 So. 2d 837, 843 (¶12) (Miss. Ct. App. 2008) (citations omitted). Green concedes that this issue is procedurally barred from our consideration. Procedural bar notwithstanding, we find that this issue lacks merit.

¶13. The dissent employs Green's insufficiency-of-the-evidence argument to find that

"simultaneous possession of three weapons in this instance is insufficient to convict Green on all three counts." However, Green has never made that argument; he only argues that the evidence was insufficient for Count IV – trafficking of stolen firearms. At no point on appeal did Green or the State raise the issue of whether Mississippi Code Annotated section 97-37-5(1) allows for multiple convictions when weapons are possessed simultaneously by the defendant. In all the cases cited by the dissent, the issue of statutory interpretation in relation to double jeopardy had been presented squarely and fully briefed.

¶14. As the dissent correctly notes, the interpretation of this section and its constitutional implications is an issue of first impression in Mississippi. Other states have differing interpretations of similar statutes. Also, the word "any" appears in other Mississippi criminal statutes, including, for instance, statutes dealing with offenses relating to child pornography. While we agree with the dissent that certain instances permit our Court to address the issue of double jeopardy as plain error, to do so using plain error in this specific instance would be inappropriate. We therefore decline to address the issue suggested by the dissent.

¶15. THE JUDGMENT OF THE ADAMS COUNTY CIRCUIT COURT OF CONVICTION OF COUNTS I, II, AND III, POSSESSION OF A WEAPON BY A CONVICTED FELON, AND SENTENCE AS A HABITUAL OFFENDER OF TEN YEARS FOR EACH COUNT, TO RUN CONSECUTIVELY; AND COUNT IV, TRAFFICKING STOLEN FIREARMS, AND SENTENCE OF FIFTEEN YEARS TO RUN CONCURRENTLY TO THE SENTENCES IN COUNTS I, II, AND III, ALL IN THE CUSTODY OF THE MISSISSIPPI DEPARTMENT OF CORRECTIONS, WITHOUT ELIGIBILITY FOR PAROLE OR PROBATION, IS AFFIRMED. ALL COSTS OF THIS APPEAL ARE ASSESSED TO ADAMS COUNTY.

LEE, C.J., IRVING AND GRIFFIS, P.JJ., ROBERTS, CARLTON, MAXWELL AND JAMES, JJ., CONCUR. BARNES, J., DISSENTS WITH SEPARATE OPINION, JOINED BY ISHEE, J.

BARNES, J., DISSENTING:

¶16. While I agree with the majority that search of Green's car did not violate his Fourth Amendment rights, I find that imposing multiple convictions for the simultaneous possession of three weapons was plain error, requiring reversal and remand to the circuit court for vacation of two of the three convictions and corresponding sentences.

¶17. In addition to his conviction for trafficking stolen firearms, Green was convicted for three counts of possession of a firearm by a convicted felon, under Mississippi Code Annotated section 97-37-5(1) (Supp. 2012), and sentenced to three consecutive ten-year terms of incarceration. Section 97-37-5(1) states:

> It shall be unlawful for any person who has been convicted of a felony under the laws of this state, any other state, or of the United States *to possess any* firearm or any bowie knife, dirk knife, butcher knife, switchblade knife, metallic knuckles, blackjack, or any muffler or silencer for any firearm unless such person has received a pardon for such felony, has received a relief from disability pursuant to Section 925(c) of Title 18 of the United States Code, or has received a certificate of rehabilitation pursuant to subsection (3) of this section.

(Emphasis added). The issue of whether this statute, which prohibits a convicted felon from possessing "any firearm," allows for multiple convictions when several weapons are possessed simultaneously is one of first impression for Mississippi. However, other jurisdictions with similarly worded statutes have found that the use of the term "any" is ambiguous and its statutory construction must be interpreted in favor of the defendant.

¶18. In *State v. Garris*, 663 S.E.2d 340 (N.C. Ct. App. 2008), Darrell Garris argued that North Carolina General Statute section 14-415.1(a), which prohibits "any person who has

been convicted of a felony to purchase, own, possess, or have in his custody, care, or control any firearm or any weapon of mass death and destruction[,]" "does not provide for multiple convictions when several weapons are possessed simultaneously." *Garris*, 663 S.E. 2d. at 346. Garris, who was running from police, dropped a black plastic bag that contained a firearm, in addition to illegal drugs. Another firearm was found in a nearby trash can along the route that Garris ran while being chased. He was convicted for two counts of possession of firearm by a felon. Discussing the federal statute and relevant caselaw regarding the possession of a firearm by a felon,[1] the North Carolina Court of Appeals noted that caselaw "favor[ed] the imposition of a single punishment unless otherwise clearly provided by statute." *Id.* at 347. Applying that rationale to section 14-415.1(a), the appellate court determined that the term "any" in its statute was ambiguous, and provided "no indication that

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[1] "[I]f Congress does not fix the punishment for a federal offense clearly and without ambiguity, doubt will be resolved against turning a single transaction into multiple offenses[.]" *Bell v. United States*, 349 U.S. 81, 84 (1955). Federal courts have consistently interpreted the federal felony-weapon-possession statute, 18 U.S.C. § 922(g) (2012), as allowing only a single conviction for multiple firearms possessed simultaneously. *See United States v. Cejas*, 761 F.3d 717, 730-31 (7th Cir. 2014) ("Our holdings that multiple § 922(g) firearm possession convictions and sentences violate double jeopardy where the defendant's possession of the same firearm is uninterrupted are premised on the fact that the unit of prosecution in § 922(g) cases is the gun possession itself; one gun (or several guns simultaneously) possessed one time sustains one conviction."); *United States v. Richardson*, 439 F.3d 421, 422 (8th Cir. 2006) ("Congress intended the 'allowable unit of prosecution' to be an incident of possession regardless of whether a defendant satisfied more than one § 922(g) classification, possessed more than one firearm, or possessed a firearm and ammunition."); *United States v. Berry*, 977 F.2d 915, 920 (5th Cir. 1992) (discussing § 922(g) and holding that "simultaneous convictions and sentences for the same criminal act violate[] the double jeopardy clause"); *and United States v. Hodges*, 628 F.2d 350, 352 (5th Cir. 1980) ("Congress did not intend . . . to make the firearms themselves the allowable units of prosecution, unless they were received at different times or stored in separate places.").

the North Carolina Legislature intended for [section] 14-415.1(a) to impose multiple penalties for a defendant's simultaneous possession of multiple firearms." Garris, S.E.2d at 348. Therefore, it concluded that the trial court's decision to convict Garris for two counts of felony weapon possession was error. *See also State v. Wiggins*, 707 S.E.2d 664, 672 (N.C. Ct. App. 2011) (finding that the defendant/felon's simultaneous possession of weapons that were utilized over a short period of time "constituted a single possessory offense rather then three separate possessory offenses").

¶19. The Illinois Supreme Court has also supported this statutory construction to its statute prohibiting the possession of a weapon by a convicted felon, concluding that the term "any firearm" may be interpreted to "mean either the singular or the plural." *People v. Carter*, 821 N.E.2d 233, 237 (Ill. 2004). "Where a criminal statute is capable of two or more constructions, courts must adopt the construction that operates in favor of the accused." *Id.* (citation omitted). In *Carter*, the defendant was found guilty of four counts of unlawful possession of a weapon by a felon for simultaneous possession of two firearms and two rounds of ammunition. The *Carter* court decided that "in the absence of a specific statutory provision to the contrary, the simultaneous possession of two firearms and firearm ammunition constituted a single offense," and it reversed and remanded the judgment to the trial court with instructions to vacate three of the convictions. *Id.* at 238-40; *see also People v. Hamilton*, No. 1-12-0369, 2014 WL 3893271, *19 (Ill. App. Ct., Aug. 8, 2014) (applying the rationale in *Carter* to Illinois's "armed habitual criminal statute" and finding that "since the [defendant's] three armed habitual criminal convictions were based on the simultaneous

possession of three guns, only one conviction can stand and the other two must be vacated").

¶20. Similarly, in *Hill v. State*, 711 So. 2d 1221, 1224-25 (Fla. Dist. Ct. App. 1998), the Florida District Court of Appeals held that "the prohibition against double jeopardy preclude[d] more than one conviction for the possession at the same time of multiple firearms by a convicted felon." In its ruling, the court specifically addressed the use of the term "any firearm" in the corresponding statute and the ambiguity issues in interpreting such language;[2] *see also Davis v. State*, 96 So. 3d 1116, 1117 (Fla. Dist. Ct. App. 2012) (per curiam) (recognizing its holding in *Hill* and vacating three of defendant's four convictions for simultaneous possession of multiple firearms by a convicted felon, as violating double jeopardy).

¶21. Mississippi Code Annotated section 97-37-5(1) states that it is "unlawful for any person who has been convicted of a felony under the laws of this state, any other state, or of the United States to possess *any* firearm[.]" (Emphasis added). This provision clearly contains the type of ambiguity warranting a statutory construction in favor of leniency and a finding that the simultaneous possession of multiple firearms by a convicted felon precludes multiple convictions. In the present case, the three weapons were all found simultaneously and in the same location – the trunk of Green's car.

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[2] *Compare to Taylor v. State*, 929 N.E.2d 912, 921 (Ind. Ct. App. 2010) (emphasizing that Indiana's statute, which states that "[a] serious violent felon who knowingly or intentionally possesses *a firearm* commits unlawful possession of *a firearm* by a serious violent felon," indicates the legislature's intent "to make each unlawful possession of one firearm by a serious violent felon a separate and independent crime") (emphasis added).

¶22. Although Green has not raised this particular argument, he did raise an insufficiency-of-the-evidence claim. Based on the foregoing authority, I find the simultaneous possession of three weapons in this instance is insufficient to convict Green on all three counts. Further, our supreme court has specifically determined that double jeopardy is a fundamental right that cannot be waived. *Rowland v. State*, 42 So. 3d 503, 508 (¶14) (Miss. 2010). A defendant's "fundamental constitutional right to be free from being prosecuted twice for the same offense" permits this Court to address this issue of double jeopardy as plain error. *Lyle v. State*, 987 So. 2d 948, 950 (¶9) (Miss. 2008) (citing *White v. State,* 702 So. 2d 107, 109 (Miss. 1997)).

¶23. Although the majority responds that neither Green nor the State raised the issue of whether section 97-37-5(1) allows for multiple convictions, Mississippi Rule of Evidence 103(d) clearly states: "Nothing in this rule precludes taking notice of plain errors affecting substantial rights although they were not brought to the attention of the court." Additionally, Mississippi Rule of Appellate Procedure 28(a)(3) states: "No issue not distinctly identified shall be argued by counsel, except upon request of the Court, but the Court may, at its option, notice a plain error not identified or distinctly specified." In *Flowers v. State*, 35 So. 3d 516, 517-18 (¶3) (Miss. 2010), our supreme court held that it was "appropriate" to exercise its authority to address plain error (whether the defendant's indictment for statutory rape was fatally defective), even though the defendant "did not object at trial, nor did he challenge [his indictment] on appeal."

> Under proper circumstances, this Court "has noted the existence of errors in trial proceedings affecting substantial rights of the defendants although they were not brought to the attention of the trial court or of this Court." *Grubb v. State*, 584 So. 2d 786, 789 (Miss. 1991). Generally, this Court will address issues on plain-error review only "when the error has impacted upon a fundamental right of the defendant." *Sanders v. State*, 678 So. 2d 663, 670 (Miss. 1996). We find that this is such a case where it is appropriate to exercise this Court's authority to address plain error.

Flowers, 35 So. 3d at 517-18 (¶3). In the present case, I find that it was plain error, and a violation of Green's fundamental right against double jeopardy, to convict and sentence Green for three separate counts of possession of "any" weapon by a convicted felon.

¶24. Consequently, I would reverse and remand to the circuit court with instructions to vacate two of the three convictions for possession of a weapon by a convicted felon and the corresponding sentences.

ISHEE, J., JOINS THIS DISSENT.

APPENDIX B

COPY OF THE APPELLANT'S MOTION FOR REHEARING FEBRUARY 3, 2015

and

NOTICE DENYING SAME MAY 19, 2015

IN THE COURT OF APPEALS OF THE STATE OF MISSISSIPPI

VERENZO CARTRELL GREEN **APPELLANT**

V. **NO. 2013-KA-01228-COA**

STATE OF MISSISSIPPI **APPELLEE**

MOTION FOR REHEARING

COMES NOW Verenzo Cartrell Green, by and through counsel, pursuant to Rule 40 of the Mississippi Rules of Appellate Procedure (MRAP), and moves this Court to grant rehearing of its decision handed down in this matter on January 20, 2015. In support thereof, Green would respectfully show the following, to-wit:

Green respectfully requests rehearing based on misapprehension of facts and misunderstanding of the law based on the following reasons.

ISSUE ONE: SUPPRESSION OF THE EVIDENCE

1. The Court misapprehended the facts of this case and misunderstood the law relied upon in its holding that Green had abandoned his car and therefore had no standing to protest the search of his vehicle. Green had a reasonable expectation of privacy and his actions did not indicate that he voluntarily relinquished his interest in his property. As the Court's opinion states, "intent may be inferred from words spoken, acts done, and other objective facts." (Op. ¶4) The Court reasoned that since Green saw the agents, moved away from the car, threw the keys to the ground, and ran toward the woods, he intended to abandon his vehicle.

2. The Court ignores the fact that Green parked his vehicle in a private parking lot of a store. The car's presence in the parking lot suggests that Green did not intend to abandon the car. The parking lot is a place where one would reasonably expect car owners to park their cars and leave their vehicles temporarily. There was no testimony that Green's car was parked in an area that was impeding traffic or located in an area where one would not expect a car to be parked.

3. In cases relied on by the Court, the defendants left their vehicles in compromising areas where cars would not normally park and where the very location of the car indicated that the owner did not intend to maintain a privacy interest in the car. In *United States v. Edwards,* 441 F.2d 749, 751 (5th Cir. 1971), Edwards jumped out of his car with the keys in the ignition and ran from the police. *Id.* at 750. Edwards left his car on a public highway, partially off the pavement, with the tail end of the car on the pavement and the front end about two feet from a ditch. *Id.* Edwards left the car's keys in the ignition and the lights were left burning. *Id.* The expectation of privacy was eliminated when Edwards left the car open and available to anyone passing through the area. His action of leaving the car running while in the middle of the police chase supports the inference that he intended to abandon the car.

4. The Court also relied on the unpublished opinion from *United States v. Wolfe,* No. 91-8603, 983 F.2d 232 (5th Cir. 1993). In this case, while the defendant left the car in question in a parking lot, Wolfe's actions surrounding his arrest were distinguishably different than Green's. In Wolfe's case, everyone that stood around the car denied ownership of the vehicle. *Id.* at *1. The car's window had been left down and the keys were on the dashboard. *Id.* Arguably, one who denies ownership of a car would not expect to have a privacy interest in the vehicle.

5. The Court's opinion also does not consider the brief time period involved in the officers interaction with Green. According to Agent Pirkey, only two to three minutes had elapsed between the time that Green threw the keys down in the parking lot and when the officers recovered them.

(Tr. 89). It is hard to image that with such short a period of time, the agents would have a reasonable belief that Green intended to permanently abandon his vehicle. To the contrary, Green's actions indicate that he intended to flee the police. One can conceivably intend to run from the police, while also maintaining a desire and plan to return to his or her vehicle at a later time.

6. The Court's opinion held that even if Green did not abandon his car, the search was reasonable as an inventory search. (Op. ¶8). The Court misapprehends the facts of this case in holding that the agents' inventory search of Green's car was not for the purposes of general rummaging.

7. First, the Court incorrectly identifies the agents as members of the Adams County Sheriff's Department. (Op. ¶2). To the contrary, Agents George Pirkey and David Washington were members of the Adams County Metro Narcotics Task Force. (Tr. 86). While Agent Pirkey was also a member of the Adams County Sheriff's Department, Agent Washington was employed by the Natchez Police Department. (Tr. 86, 114).

8. It is important to note that the agents were not driving around town, looking to serve Green with legal process from the Adams County Sheriff's Department. Nonetheless, the men were driving down Broadmoor Street when they happened to recognize Green, someone whom both of the agents had many dealings with in the past. (Tr. 114-15).

9. Because the Adams County Sheriff's Department had a warrant for Green's arrest, the officers had the right to arrest Green. The arrest warrant, however, did not extend to Green's car. None of the warrantless search exceptions applied in this case. This was not a case of search incident to arrest, because Green was not arrested on the scene. In fact, he was not arrested until months later. (Tr. 114, 149). This also excluded the stop and frisk exception.

10. Likewise, this was not a plain view exception because the officers testified that they did not suspect any crime had occurred when they arrived in the store's parking lot that day. (Tr. 99). For

this same reason, the hot pursuit and emergency search would not apply. Green did not consent to the search of his car, so the only exception left would be the administrative (inventory) search.

11. The Court held that the agents' inventory search of Green's car was permissible simply because Adams County Sheriff's Department had a standard procedure to inventory the contents of a vehicle when a car was towed. (Op. ¶11). The Court also held that the record showed no evidence of bad faith on the part of the officers in conducting the search. (Op. ¶11)

12. The Court's opinion ignores the fact that the officers had no reason to tow Green's vehicle from the parking lot of the Broadmoor Grocery. Had the officers had a reason to legally tow the car, they would have properly been able to inventory the car pursuant to their standard procedures. In this case, however, there are no facts to support the position that the officers had a justified reason for initially towing the car.

13. Green's car was parked on private property. In any other likely scenario, if a store owner had a vehicle that he or she needed to be towed from their private property, the store owner would contact a private wrecking service. The store owner would not use the resources of law enforcement to tow the car from their business. In this case, the store owner was not even initially aware of Green's car on its property. The store manager did not initiate the call to have the car towed. The store manager only requested that the agents tow Green's car after the agents went inside the store and informed the manager about what had occurred.

14. As the Court's opinion stands, the law enforcement officers could have picked any car out of the parking lot, walked in the store, and asked the manager if the manager wanted the car towed. Once the agents have decided to tow the car, they have created a situation where the inventory search is now permissible. Armed with the permission of the store manager alone, the agents would have then been allowed to search any car on the premises. The circumstances surrounding the towing of Green's car indicate the subjective intent of the officers. Green respectfully requests that

this Court reconsider its holding that Green's attack of this unconstitutional search is meritless.

ISSUE TWO: SUFFICIENCY OF THE EVIDENCE

15. Respectfully, the Court misapprehended the facts of this appeal when it found that Green conceded that his argument attacking the sufficiency of the evidence against him was procedurally barred. (Op. ¶12). While the Appellant's Brief mentioned that the sufficiency argument was not addressed in the motion for directed verdict or motion for JNOV, Appellant counsel informed the Court that this issue should be considered for review under the doctrine of plain error. (Appellant's Brief, Pg. 11). As the Court's opinion recognizes, the applicability of the plain-error doctrine is as follows:

> "The plain-error doctrine requires that there be an error and that the error must have resulted in a manifest miscarriage of justice. *Gray v. State,* 549 So.2d 1316, 1321 (Miss.1989). The plain-error rule will only be applied when a defendant's substantive or fundamental rights are affected. *Grubb v. State,* 584 So.2d 786, 789 (Miss.1991). Plain-error review is properly applied when "correcting obvious instances of injustice or misapplied law." *Newport v. Fact Concerts, Inc.,* 453 U.S. 247, 256, 101 S.Ct. 2748, 69 L.Ed.2d 616 (1981).

Jenkins v. State, 75 So. 3d 49, 57 (¶22) (Miss. Ct. App. 2011) (emphasis added)

17. The Court's opinion completely ignores the applicability of plain error review in this case. Under this doctrine of plain error review, the Court is able to address the issue raised in the dissenting opinion that Green's constitutional rights against double jeopardy had been violated. The Court's opinion ignores the Supreme Court's solid stance in *Graves v. State*, 969 So. 2d 845, 846-47 (¶6), in which the Court unequivocally proclaimed that ". . . protection against double jeopardy is a fundamental right, [and] we will not apply a procedural bar . . . ." Likewise, in *Roland v. State*, 42 So. 3d 503, 508 (¶14) (Miss. 2010), the Court determined that double jeopardy is a fundamental right that simply cannot be waived.

18. As the Court's opinion stands, although at least two judges on the Court have noticed that

Green's constitutional protections against double jeopardy have been violated in this issue of first impression, Green will be forced to serve three separate sentences for one violation of Mississippi Code Annotated Section 97-37-5(1) (Supp. 2012). The statute, as it is written, creates ambiguity as to whether the law punishes the carrying of each separate firearm or firearms as a whole. In these instances, the laws should be interpreted in favor of leniency toward the defendant and the trial court should have been prohibited from punishing Green three separate times for one offense.

CONCLUSION

19. Green respectfully submits that the foregoing arguments warrant the grant of this Motion for Rehearing and requests that this Court withdraw its original opinion, handed down January 20, 2014, and substitute a new opinion, reversing Green's sentence and remanding his case to the trial court for a new trial.

WHEREFORE, PREMISES CONSIDERED, Green respectfully requests that the Court grant this Motion for Rehearing.

Respectfully submitted,

FOR VERENZO CARTRELL GREEN, APPELLANT

/s/Erin E. Pridgen
Erin E. Pridgen, Appellant Counsel

CERTIFICATE OF SERVICE

I, Erin E. Pridgen, Counsel for Verenzo Cartrell Green, do hereby certify that on this day I electronically filed the forgoing **MOTION FOR REHEARING** with the Clerk of the Court using the MEC system which sent notification of such filing to the following:

Honorable John R. Henry, Jr.
Attorney General Office
Post Office Box 220
Jackson, MS 39205-0220

Further, I have this day caused to be mailed via United States Postal Service, First Class postage prepaid, a true and correct copy of the above to the following non- MEC participants:

Verenzo Cartrell Green
MDOC #L0799
South Mississippi Correctional Institution
Post Office Box 1419
Leakesville MS 39451

This the 3rd day of February 2015.

/s/Erin E. Pridgen
Erin E. Pridgen, Appellant Counsel

Erin E. Pridgen, MS Bar No. 102352
INDIGENT APPEALS DIVISION
OFFICE OF STATE PUBLIC DEFENDER
Post Office Box 3510
Jackson, Mississippi 39207-3510
Telephone: 601-576-4290
Fax: 601-576-4205
E-mail: eprid@ospd.ms.gov

Supreme Court of Mississippi
Court of Appeals of the State of Mississippi
Office of the Clerk

Muriel B. Ellis
Post Office Box 249
Jackson, Mississippi 39205-0249
Telephone: (601) 359-3694
Facsimile: (601) 359-2407

(Street Address)
450 High Street
Jackson, Mississippi 39201-1082

e-mail:sctclerk@courts.ms.gov

May 19, 2015

This is to advise you that the Mississippi Court of Appeals rendered the following decision on the 19th day of May, 2015.

Court of Appeals Case # 2013-KA-01228-COA
Trial Court Case # 12-KR-0138-J

Verenzo Cartrell Green a/k/a Verenzo Green v. State of Mississippi

The motion for rehearing is denied.

* NOTICE TO CHANCERY/CIRCUIT/COUNTY COURT CLERKS *
If an original of any exhibit other than photos was sent to the Supreme Court Clerk and should now be returned to you, please advise this office in writing immediately.

Please note: Pursuant to MRAP 45(c), amended effective July, 1, 2010, copies of opinions will not be mailed. Any opinion rendered may be found at www.mssc.state.ms.us under the Quick Links/Supreme Court/Decision for the date of the decision or the Quick Links/Court of Appeals/Decision for the date of the decision.